RECENT CASES.

ADMIRALTY — CONSTRUCTION OF STATE STATUTE GIVING MARITIME LIEN. — A Michigan statute subjects vessels at their home port to a lien for "supplies furnished for the use of such water craft." *Held*, that this must be construed to be limited to supplies furnished on the credit of the vessel. *The Samuel Marshall*, 54 Fed. Rep. 396 (C. Ct. of App., Mich.).

The argument of the court is, that although such liens may be created by State statute, they are maritime in their nature, and within the exclusive jurisdiction of the United States courts; and that the United States courts, under their admiralty jurisdiction, will enforce such liens only under the limitations to which maritime liens of the same class are regularly subject. This would be equally true, whether or not such a result could be reached by fair construction of the statute. But it is also to be presumed that the Legislature, in creating the lien, meant to give it the usual characteristics of maritime liens. The case overrules an earlier decision in the same circuit. *The Illinois White and Cheek*, 2 Flip. 383.

ADMIRALTY — MARITIME LIEN GIVEN BY STATE STATUTE — JURISDICTION OF STATE COURTS. — A statute of Illinois (Rev. Stat. of 1874, c. 1, § 1) makes all steamships subject to a lien for supplies furnished at their home port. A United States statute (Rev. Stat. § 492) provides that no mortgage of any vessel of the United States shall be valid except against the mortgagor, etc., unless such mortgage is registered at the office of the collector of customs of the home port. *Held*, that the lien given by the State statute is maritime; that as such, it is within the exclusive admiralty jurisdiction of the United States courts; that the latter are therefore not bound as to this case by the local law of Illinois; and that a maritime lien, even though created by a State statute, takes precedence of a prior mortgage duly recorded under the United States Registry Act. *The J. E. Rumbell*, 13 Sup. Ct. Rep. 408.

The decisions in Illinois, and in the United States circuit of which Illinois forms a part, — all of which are here overruled, — have gone consistently the other way upon the last point. Elsewhere the trend of recent authority is strongly in accord with the present decision. Upon the second point, the decision is of course irreconcilable with the very recent Massachusetts case of *Atlantic Works* v. *The Glide*, 33 N. E. Rep. 163, and 7 Harv. Law Rev. 163.

AGENCY — LIABILITY OF SUB-AGENT TO PRINCIPAL — CUSTOM AMONG STOCKBROKERS. — The plaintiff, who lived in Canada, sent through X, a country stockbroker, to defendants, a London firm, a power of attorney issued to one of the defendants, authorizing him to sell some New Consols which stood in the plaintiff's name. The defendants sold them, and applied the proceeds to offset a balance in their favor on their account with X. X subsequently went into bankruptcy, and the plaintiff, who had not learned until then that the sale had been made, applied to the defendants for the proceeds, which they refused to hand over. *Held*, that the custom among stockbrokers did not justify the defendants in applying the proceeds of the plaintiff's consols to cover the deficit in the account of X; and that the plaintiff could recover the entire amount, excluding brokerage. *Crossley* v. *Magniac* (1893), 1 Ch. 594 (England).

The decision may be said to hinge on the custom which prevails among stockbrokers. Regarding the powers of a bank to deal with the proceeds of a note transmitted to it for collection, see 1 Daniel, Neg. Inst. 3d ed. §§ 337–340.

BILLS AND NOTES — PROVISION IN MORTGAGE TO DECLARE DUE BEFORE TIME OF MATURITY. — Several promissory notes were given in the usual form, due at specified future dates, and secured by a single mortgage, containing a stipulation at the end that, if default should be made in any of the prior provisions, it should be lawful for the mortgagee to declare the whole sum above specified to be due. One note coming due and being unpaid, the holder brought suit upon all the notes before the date of their maturity, alleging that he elected to declare the notes to be due. *Held*, that the provision in the mortgage did not make it possible to sue upon the notes before their regular times of maturity, but that plaintiff's only remedy was to foreclose the mortgage, which he could do in accordance with the provision. *White* v. *Miller*, 54 N. W. Rep. 736 (Minn.).

The few courts which have decided this question have reached opposite conclusions. The leading case in *accord* is *McClelland* v. *Bishop*, 42 Ohio St. 113 (1884). Perhaps the best case *contra* is *Chambers* v. *Marks*, 93 Ala. 412 (1891); s. c. 9 So. Rep. 74. One written contract inconsistent with the terms of another written contract may well furnish a good equitable defence when suit is brought upon the latter; but it is not so

easy to see how a plaintiff can sue upon one contract, and recover in accordance with the terms of another. It is reforming the contract upon which he sues, and recovering upon it at the same time.

CONSTITUTIONAL LAW — EMINENT DOMAIN — COMPENSATION FOR DIVERSION OF PERCOLATING WATERS. — Congress authorized the construction by the United States of a tunnel to provide the city of Washington with water, and provided that any person who should be "directly injured in any property right" by the construction of the tunnel should receive compensation. The well of the plaintiff below, situated 500 feet from the right of way, was deprived by defendant's works of the supply of percolating water which had hitherto soaked into it and filled it. *Held*, that under the Act of Congress, plaintiff was entitled to compensation. *United States* v. *Alexander*, 13 Sup. Ct. Rep. 529.

The court refuse to be bound by the well-known cases (see *Acton* v. *Blundell*, 12 M. & W. 324), in which an action of tort is held not to lie in favor of one landowner against another for diverting the water which customarily percolates into the plaintiff's well. Reliance is chiefly placed upon a series of Massachusetts decisions (3 Cush. 107; 144 Mass. 139), in which compensation was allowed for a similar injury under a statute which covered all "damages occasioned by" the work under construction. But (1) it is doubtful whether the Massachusetts cases are not an innovation. There can hardly be damage in a legal sense unless there is a right which can be damaged; and the gist of *Acton* v. *Blundell* is that no right to percolating water exists. And (2) even if "damage" in these cases be construed in a popular sense, a similar construction of "direct injury to property rights" in the present case is far more difficult.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — TAXATION. — An ordinance of St. Louis provided that "all telegraph companies which are not by ordinance taxed on their gross income for city purposes, shall pay to the city of St. Louis, for the privilege of using the streets, alleys, and public places thereof, the sum of five dollars per annum" for every telegraph pole used by them. Defendant resisted on the ground that this was really a license tax imposed for the privilege of carrying on interstate commerce. *Held*, — Brown, J., *dissenting*, — that the United States Circuit Court erred in ruling that the ordinance was void upon its face as imposing a license tax for the privilege of doing business, and in directing judgment for defendant. A new trial was ordered. *City of St. Louis* v. *W. U. Tel. Co.*, 13 Sup. Ct. Rep. 485.

The case was tried below without a jury, and came up upon a record which the court treat as somewhat informal. It does not appear with sufficient clearness what facts were before the court, to speak with absolute confidence of the meaning of the decision. The majority hold (1) that plaintiff can exact a reasonable rental from defendant for the use of its streets; (2) that such appears upon the face of the ordinance to have been intended; (3) that there are not sufficient facts before the court to enable it to say that the amount of the charge is so unreasonable as to make it void; but (4) that such an objection will be open to defendant upon the new trial. Brown, J, dissents upon the third point, on two grounds: first, that the court should take judicial notice that five dollars a pole is an unreasonable charge; second, that the same is proved by the fact that the annual sum assessed under the ordinance amounted to forty-four per cent of the entire valuation of defendant's property in St. Louis, — arguing from these facts that it was a mere pretence to call such a charge compensation for use of the streets, and that it was therefore void *in toto* as a tax on interstate commerce. It does not appear with certainty whether the majority considered the second of the above facts as being before the court. The decision is interesting, especially when compared with *Maine* v. *G. T. R. R.*, 142 U. S. 217, as showing the recent tendency of the Supreme Court to interpret the commerce clause of the United States Constitution less strictly against the States.

CORPORATIONS — SUBSCRIPTION TO CORPORATE STOCK — RIGHTS OF SUBSCRIBER. — *Held*, that when an active, organized corporation increases its stock, a subscriber for this new issue of stock does not by the mere fact of subscription become a stockholder; and he is not entitled to a certificate of stock, or to a beneficial interest in the corporation, until he has paid at least a part of his subscription. *Baltimore City Pass. R. R.* v. *Hambleton*, 26 Atl. Rep. 279 (Md.).

The court distinguish the cases of the formation of a corporation, and of an increase of stock by an existing corporation; they hold that in the latter case a subscription for stock is merely an agreement to become a stockholder, and they cite with approval *Gould* v. *Oneonta*, 71 N. Y. 298, and *St. Paul, etc. R. R.* v. *Robbins*, 23 Minn. 440. Morawetz finds fault with these cases, following out his view that a corporation is distinctly an aggregation of individual persons who have contracted to form a corporate association, and that membership is a kind of status arising at once from the formation of this contract. 1 Morawetz, Priv. Corp. §§ 44–46, 54, 61.

CRIMINAL LAW — CONSPIRACY TO OBSTRUCT UNITED STATES JUSTICE — IMPUTED INTENT. — An indictment under U. S. Rev. Stat. § 5399, alleged that defendants were employees of B. Mining Co.; that in proceedings in equity instituted by B. Co. in the United States Circuit Courts, the Miners' Union of Wardner, an organization of which defendants were members, was enjoined from intimidating other employees of B. Co.; that while the injunction was in force, defendants did nevertheless conspire to intimidate, and did intimidate, other employees of B. Co.; and that thereby defendants committed the offence of conspiring to obstruct the administration of justice in the courts of the United States. *Held* (Brewer and Brown, JJ., *dissenting*), that it was error to overrule a motion to quash the indictment, — which was defective on its face in failing to aver that defendants had been properly served with notice of the injunction, and also in failing to aver that the object of the conspiracy was the obstruction of Federal justice. *Pettibone et al.* v. *United States*, 13 Sup. Ct. Rep. 542.

The ground of the decision is that there must be an intent, actual or imputed, to obstruct the administration of Federal justice; that this intent cannot be implied from allegations which do not show that defendants knew that Federal justice was being administered; and that such an intent cannot be imputed from the mere fact that defendants were engaged in an unlawful conspiracy. Conspiracy, by itself, is an offence against the State alone; and the intent to violate State law does not carry with it by legal implication the intent to violate the law of another jurisdiction. On the latter point, Brewer and Brown, JJ., dissent, holding that the present decision is inconsistent with *In re Coy*, 127 U. S. 731.

CRIMINAL LAW — MANSLAUGHTER — NEGLECT TO PROVIDE FOOD. — The prisoner, a woman of full age and without means of her own, lived with and was maintained by the deceased, her aunt, a woman of seventy-three. For the last ten days of her life the deceased suffered from a disease which prevented her from moving or doing anything to procure assistance; during this time the prisoner lived in the house, and took in the food supplied by the tradesmen, but apparently gave none of it to the deceased; nor did she inform any one of the condition of deceased, although she had abundant opportunity to do so. No one but the prisoner had any knowledge of the condition of deceased prior to her death, which was substantially accelerated by want of food. *Held*, that a duty was imposed upon the prisoner under the circumstances to supply the deceased with sufficient food to maintain life; and as the death of the deceased had been accelerated by neglect of such duty, the prisoner was properly convicted of manslaughter. *The Queen* v. *Instan* [1893], 1 Q. B. 450.

There is no English case exactly in point; it is interesting to compare this case with *Rex* v. *Smith*, 2 C. & P. 449, where it was held that one who merely allows an idiot brother to remain under his roof, is under no duty to provide him with food or medical attendance, and with *Reg.* v. *Shepherd*, Leigh & C. 147, cited by counsel for prisoner, where it was decided that where a mother neglected to procure the services of a midwife for her daughter, and for want of them the daughter died, the mother could not be convicted of manslaughter. The case under discussion is much stronger than the idiot brother case, owing to the relations between the parties, the prisoner being maintained entirely by the deceased; and under these circumstances it was properly left to the jury to find an implied undertaking by the prisoner to give food and nursing to deceased. The duty to furnish food rests principally, however, on the fact that deceased paid for the food which the prisoner took in.

DAMAGES — MENTAL SUFFERING. — The plaintiff in this case was allowed to recover for the sense of humiliation and wrong suffered by being wrongfully ejected from a train. *Willson* v. *Northern Pacific R. R. Co.*, 32 Pac. Rep. 468 (Washington).

This case follows the rule adopted by the great weight of authority, that a "sense of insult or indignity, mortification, or wounded pride, is a subject for compensation." 1 Sedgwick on Damages, § 67.

EVIDENCE — HEARSAY — ENTRIES IN REGULAR COURSE OF DUTY. — To prove that no train was passing a certain point at a certain time, defendant gave in evidence entries in its train-despatcher's records. The entries were made as follows: When a train passed any station on the line, it was the duty of the telegraph operator at that station to send to the train-despatcher's office at the starting-point of the road a statement of the time at which the train passed. It was the duty of the receiving operator at the train-despatcher's office to enter these statements on a regular blank; and the despatcher relied on these entries in controlling the movements of the trains. These entries were accompanied by the testimony of the receiving operator, but the operator who sent the messages could not be found. *Held*, that these entries were properly admitted. *Donovan* v. *Railway*, 33 N. E. Rep. 583 (Mass.).

The cases relied on by the court as authorities for this decision are all distinguish

able from the principal case by the fact that it does not appear that the persons making the entries had no personal knowledge of the facts recorded. In *Mayor of New York* v. *Railway*, 102 N. Y. 572, entries made by a foreman from the oral reports of sub-foremen were admitted, but they were accompanied by the testimony of the sub-foremen. Therefore, if the Massachusetts court had adhered to the usual practice of strictly excluding any hearsay for the admission of which there is no precedent, this evidence would have been kept out. But it is submitted that no objection can properly be taken to the extension of this exception to the rule against hearsay evidence to a case like this, where, though the entries were not made by one having personal knowledge of the facts, they were the basis for the performance of so responsible a duty.

EVIDENCE — PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY SUIT. — Plaintiff sued a city for an injury received by a fall occasioned by a defective sidewalk. The attorney for the city requested plaintiff to remove her glove and show her injured hand to the jury; also to exhibit her injured arm to a physician for examination; she refused, and the trial judge declined to require her to do it. *Held*, that this was error. The court say that it evidently would not have been a shock to plaintiff's sense of delicacy to have done as requested, and the court should have compelled submission. *Graves* v. *City of Battle Creek*, 54 N. W. Rep. 757 (Mich.).

The line of cases in *accord* starts with *Schroeder* v. *Chicago, &c. Railway*, 47 Iowa, 375 (1877); that case was generally followed, especially in the Western and Southern States, until 1891, when the Supreme Court of the United States came to an opposite conclusion in a well-considered case, two justices dissenting. *Union Pacific Railway* v. *Botsford*, 141 U. S. 250. This case was followed by *McQuigan* v. *Delaware, &c. Railroad Co.*, 129 N. Y. 50 (1892), and *Pennsylvania Co.* v. *Newmeyer*, 129 Ind. 401 (1892). With the principal case following the old doctrine, in a State where the question was unsettled, it is not easy to foresee what will be the future course of decision. The older cases are collected in a note to *Sidekum* v. *Wabash &c. Railway*, 3 Am. St. Rep. 549, at p. 554.

HUSBAND AND WIFE — ANTENUPTIAL AGREEMENT — PRESUMPTION. — A promised B before marriage to relinquish all right to dower in B's estate, in consideration that she should have a preferred claim against the estate, if she survived B, payable within two years after his death. The contract was free from fraud except so far as fraud might be inferred from a provision for A much smaller than her dower interest. *Held*, where a provision in lieu of dower is disproportionate to the means of the intended husband, there is presumption of concealment of facts material to the contract, and the burden is upon him who claims in the husband's right to show that the wife had full knowledge of them. As it has not been shown that A knew the extent of B's property at the time of the agreement, dower should be assigned to her. *Taylor* v. *Taylor*, 33 N. E. Rep. 532 (Ill.).

HUSBAND AND WIFE — ANTENUPTIAL AGREEMENT — CONSIDERATION. — Before marriage with defendant, plaintiff went with him, at his request, to his attorney, who drew a contract, whereby, in consideration of $5,000, plaintiff relinquished all claims to dower in defendant's estate. Plaintiff, on reading the draft, said she was not marrying for money. To the reply that defendant would not marry unless she gave up her right to dower, she said she was willing, but wanted no money. She then executed another contract with a nominal consideration, though she gave up a dower interest thereby of more than $8,000. No evidence was given that the nature of the contract was explained to plaintiff. *Held*, upon a suit for cancellation of the contract, defendant has the burden of convincing the court by most cogent proof that plaintiff executed the agreement freely, and understood the effect of it. That burden this evidence does not sustain. *Graham* v. *Graham*, 22 N. Y. Supp. 299.

At common law antenuptial agreements were no bar to dower. *Vernon's Case*, 4 Coke, 1. Before the Statute of Uses, most of the land in England was held by feoffees to uses. As there was no dower in uses, a jointure was generally created before marriage, that the wife might have a competent provision after her husband's death; but when the Statute of Uses executed the legal title in the *cestuis que usent*, the wives who had jointures would have got both jointure and dower, had it not also provided that women having jointures should not take dower. While the effect of the statute has been to allow an antenuptial contract to bar dower, yet the historical idea that the contract is *for the benefit of the wife* still prevails.

The principal case, and *Taylor* v. *Taylor*, *supra*, make it almost impossible to bar dower, unless the provision for the wife is a fair equivalent for the dower, so strong a presumption of fraud is raised against the transaction. Most recent decisions state the same principle as these cases, though it is doubtful if any have gone as far upon the facts. *Kline's Estate*, 64 Pa. St. 122; *Pierce* v. *Pierce*, 71 N. Y. 154; *Spurlock* v. *Brown*, 18 S. W. Rep. 868 (Tenn.). But see *Forwood* v. *Forwood*, 86 Ky. 114.

HUSBAND AND WIFE — RIGHT OF WIDOW TO CONTROL HUSBAND'S INTERMENT. — *Held*, that a widow has a right to remove the body of her husband from its place of original sepulture without the consent of the next of kin of the deceased. *Hackett* v. *Hackett*, 26 Atl. Rep. 42 (R. I.).

This decision is undoubtedly correct. See Report of Mr. S. B. Ruggles on the Law of Burial, 4 Bradf. Sur. 503, and a note to the case of *Weld* v. *Walker*, in 14 Am. Law Rev. (N. S. vol. 1) 62.

INSURANCE — CONDITIONS IN POLICY. — An insurance policy provided that the insurer shall not be liable for loss caused by an "explosion of any kind, unless fire ensues, and then for the loss or damage by fire only." *Held*, that the insurance company is not liable when the damage resulted from an explosion produced by lighting a match in a room filled with illuminating gas; the explosion, and not the ignition of the match, being the proximate cause of the injury. *Heuer* v. *Northwestern Nat. Ins. Co.*, 33 N. E. Rep. 411 (Ill.).

This precise point has not often come before the courts, and the case is one of first impression in Illinois. The decision seems undoubtedly sound. Cf. 2 May on Insurance, § 416 *a*; also *Briggs* v. *Ins. Co.*, 53 N. Y. 446, *accord.*

MUNICIPAL CORPORATIONS — POWER TO GRANT EXCLUSIVE FRANCHISE. — By Act of Incorporation, a city had exclusive power "to permit, allow, and regulate the laying down of tracks for street-cars." *Held*, that the city did not thereby obtain authority to grant for a term of years the exclusive right to occupy its streets with street railroads. *Parkhurst* v. *City of Salem*, 32 Pac. Rep. 304 (Ore.).

The court bases its decision on the general ground that such extraordinary power can be conferred upon a city only by the use of express terms in the legislative grant, and can never be implied from a mere general authority. This is in accord with the great weight of authority, and the same principles are applied with respect to the grant of franchises for ferries, and for the laying of gas and water pipes. See 2 Dillon, Municipal Corporations, 727.

PATENTS — LAPSE OF FOREIGN PATENT BEFORE ISSUE OF AMERICAN PATENT. — Section 4887 of the Revised Statutes (U. S.) provides that "Every patent granted for an invention which has previously been patented in a foreign country shall be so limited as to expire with the foreign patent; or, if there be more than one, at the same time with the one having the shortest term." In 1874, P. & D. obtained for a certain invention an English patent running for fourteen years. In 1881, by reason of failure to pay a stamp duty this patent lapsed. In 1882, plaintiff, assignee of P. & D., obtained an American patent for the same invention. *Held*, that the American patent was void *ab initio*. *Huber et al.* v. *N. O. Nelson Manufacturing Co.*, 13 Sup. Ct. Rep. 602.

In *Pohl* v. *Brewing Co.*, 134 U. S. 385, the Supreme Court had held that where the foreign patent lapsed *after* the issue of the American patent, the latter continued to run for the term for which the foreign patent had been originally granted. The case at bar is distinguished upon the ground that the continued existence of the foreign patent is a condition precedent to the creation, though not to the running, of an American patent issued under § 4887.

PUBLIC OFFICER — ELECTION OF AN ALIEN — NATURALIZATION AFTER ELECTION. — A was elected sheriff of a county in Iowa; after the election it was discovered that he was an alien, although he had not known it before, supposing his father was naturalized before he came of age. He immediately applied for naturalization papers, and these were granted him before the time for entering into the office. *Held*, that he was qualified to hold the office, and the fact that he was not so qualified when elected was immaterial. *State* v. *Van Beek*, 54 N. W. Rep. 525 (Iowa).

The majority of the court place the case upon common-law principles, holding that no constitutional or statutory provisions are applicable, and expressly following *State* v. *Murry*, 28 Wis. 96, and *State* v. *Trumpf*, 50 Wis. 103; s. c. 5 N. W. Rep. 876, and 6 N. W. Rep. 512.

REAL PROPERTY — ABUTTER'S RIGHT TO DAMAGES FOR CHANGE IN GRADE OF STREET BY RAILROAD. — The highway on which plaintiff's land abutted crossed defendant's tracks. Defendant raised the grade of its tracks, and raised the highway correspondingly, thereby seriously interfering with plaintiff's access to his land. *Held*, that defendant is liable for damage thus caused. *Egbert* v. *Railway*, 32 N. E. Rep. 659 (Ind.).

This is the first carefully considered case on this point in Indiana, and the court expressly refuses to follow the New York doctrine laid down in *Conklin* v. *Railway*, 102 N. Y. 107. The authorities are collected in Lewis on Eminent Domain, § 118, notes 3 and 4.

REAL PROPERTY — CONVEYANCE OF COAL — RIGHT OF GRANTOR TO REACH UNDERLYING OIL. — The owner of land granted in fee coal lying under the surface, reserving to himself no right or easement in said coal. *Held* (1), that the grantor retained the title to everything beneath the coal down to the centre of the earth; and hence (2) that the grantee, though he owns the coal in fee, is not entitled to an injunction restraining the grantor from boring through the coal to reach gas and oil found to exist beneath it. *Chartier's Block Coal Co.* v. *Mellon*, 25 Atl. Rep. 597 (Penn.).

REAL PROPERTY — QUITCLAIM DEED — BONA FIDE PURCHASER. — *Held*, that the grantee of land is not precluded from setting up the defence of purchase for value without notice against prior equitable rights, by reason of the fact that he holds under a quitclaim deed which purported to convey only the grantor's right, title, and interest. *Moelle* v. *Sherwood*, 13 Sup. Ct. Rep. 426. Reaffirmed (*semble*) *United States* v. *California & Oregon Land Co.*, 13 Sup. Ct. Rep. 458.

The first case comes up from the United States Circuit Court for Nebraska; but Field, J., in his opinion, cites no Nebraska cases, and treats the subject as one of general law. This is a generalization from the case of *McDonald* v. *Belding*, 145 U. S. 492, where the same decision was reached in a case coming from Arkansas in harmony with decisions of the Supreme Court of that State. The *dicta* to the contrary in *Oliver* v. *Piatt*, 3 How. 333, at p. 410; *May* v. *Le Claire*, 11 Wall. 217, at p. 232; and *Baker* v. *Humphrey*, 101 U. S. 494, at p. 499, must be considered as overruled.

SALES — STATUTE OF FRAUDS. — Plaintiff sued defendant on an oral agreement to sell and assign a mortgage. *Held*, that this was a contract for the sale of "goods, wares, and merchandise" within the 17th section of the Statute of Frauds, and that the court below was in error in refusing to nonsuit, as its requirements had not been satisfied. *Greenwood* v. *Law*, 26 N. E. Rep. 134 (N. J.).

This is a case of first impression in New Jersey, following *Tisdale* v. *Harris*, 20 Pick. 9, where Shaw, C. J., in 1837, held that shares in a corporation were within the statute, citing for this position several English cases. In 1840 the Court of Queen's Bench, in *Humble* v. *Mitchell*, 11 Ad. & E. 205, decided the other way. The opinion was a short one, and made no mention of the English authorities cited in the Massachusetts case, but it has been followed in England. See Benjamin, Sales, 4th ed., p. 111.

TORTS — ACTION BY PARENT FOR LOSS OF SERVICES. — A minor living with and supported by his widowed mother was injured by the negligence of defendant. *Held*, the mother can recover for loss of his services, and for expenses reasonably incurred in caring for the child. *Horgan* v. *Pacific Mills*, 33 N. E. Rep 581 (Mass.).

This is in line with the general tendency to allow a recovery in such cases, 50 N. H. 501.

TORT — ARREST WITHOUT WARRANT. — One A took part in an affray. Defendant, who was town marshal, was informed a few minutes afterwards that a breach of the peace had been committed. On his arrival at the spot where the affray took place the parties were gone, and good order had been restored; but defendant pursued A and attempted to arrest him without a warrant. In the struggle which ensued, A was killed. *Held*, that defendant had no authority in law to arrest A without a warrant. *State* v. *Lewis*, 33 N. E. Rep. 405 (Ohio).

The decision is clearly right, the power to arrest without warrant being given to prevent a breach of the peace, but suggests a most difficult question of fact, *i. e.* when is an affray over? The better opinion seems to be that an affray is over as soon as the parties have ceased fighting, unless there is a reasonable apprehension of an immediate renewal of the breach of the peace. See *Timothy* v. *Simpson*, 1 Cromp. M. & R. 757; *Queen* v. *Marsden*, L. R. 1 Cr. Cas. 131.

TORTS — NEGLIGENCE — EXISTENCE OF DUTY NOT ARISING OUT OF CONTRACT. — Plaintiff was mortgagee of a builder's interest, and advanced money in instalments on the faith of certificates issued by defendant to the effect that certain stages in the work had been reached. Defendant's contract was with the owner of the land. In consequence of his negligence, the certificates contained untrue statements, and the plaintiff was damaged. *Held*, that defendant owed no duty to plaintiff, and therefore was not liable. *Le Lievre* v. *Gould*, [1893], 1 Q. B. 491.

This decision would be followed by the majority of courts. Mechem on Agency, § 836, and cases cited. If defendant did not know plaintiff would rely on his certificates, unquestionably the decision is correct. If he did know, then the case is within the general doctrine of Derry & Peek, 14 App. Cas. 337, though not so strong, for the representation here was not made directly to the person injured. The courts might well, however, transform the moral responsibility of using care into a legal duty, — a view which is put forward by Sir Frederick Pollock in 5 L. Q. R. 422.

TRUSTS — DEVISE FOR HOSPITALITY. — A will executed by an orthodox member of the Society of Friends directed his trustees to keep his house open "for the reception and entertainment of ministers and others travelling in the service of truth," in the same manner that he and his ancestors before him had dispensed their hospitality. *Held*, that the trust is not one for charitable or religious uses, but for hospitality alone, and hence is void, under the statute against perpetuities. *Kelly* v. *Nichols*, 25 Atl. Rep. 840 (R. I.).

This decision seems clearly correct. Gratuitous aid to those not in need of it is benevolence, not charity, in the legal acceptation of the word.

TRUSTS — MORTGAGE IN FRAUD OF CREDITORS — PARTIAL ASSIGNMENT TO PURCHASER FOR VALUE WITHOUT NOTICE. — A debtor gave his note, secured by a mortgage, to a volunteer to defraud his creditors. The volunteer assigned a part of the note and mortgage to G, a purchaser for value without notice. The creditors filed a petition for a sale of the mortgaged land and an adjustment of the claims upon it, and made G a party. *Held*, that G was entitled as against the creditors to the share which he had purchased. *Holmes* v. *Gardner*, 33 N. E. Rep. 644 (Ohio).

This decision is clearly right; but it is interesting, as being apparently the first decision on the point. That one who had purchased the whole mortgage debt, and had got the legal title by a conveyance of the mortgaged premises, should be protected is of course well settled. It is also certain that, had the mortgagee merely declared himself a trustee for the purchaser, the purchaser would not have been protected. The actual facts are not on all fours with either of these cases. The purchaser had got, not a legal, but an equitable interest; and though the interest was equitable, it was certainly not the agreement of the parties that the purchaser should have a claim against the mortgagee as trustee of the mortgage debt to the extent of the interest purchased. What the purchaser got was an interest in the debt itself; and to this he was entitled against the creditors as he would have been to a charge on the land.

TRUSTS — PURCHASE FOR VALUE — EXECUTION SALE. — Trust property was sold at execution sale to satisfy a judgment against the trustee. The judgment creditor bid in the property, in ignorance of the trust, and the amount of the purchase price was credited on his judgment. *Held*, that the judgment creditor was a purchaser for value, and so took the land free from equities. *Riley* v. *Martinelli*, 32 Pac. Rep. 579 (Cal.).

The authorities appear to be in conflict, but the case seems clearly correct, since for this purpose the creditor was in same position as any other purchaser, and in taking satisfaction of his judgment gave up a right to prosecute it further, thus parting with a present valuable consideration.

WILLS — CONSTRUCTION. — H bequeathed money in trust for P, who was to invest the same in bank stock, and to pay the income thereof to R, during her life, and at her death to pay and deliver the trust property to the lawful issue of R then alive. *Held*, that the property should be distributed among the children and grandchildren of R, since the word "issue" includes all descendants. *Pearce* v. *Rickard*, 26 Atl. Rep. 38 (R. I.).

It is submitted that the *per stirpes* construction of the word "issue," approved by Chancellor Kent (4 Kent. Comm. 278) and Judge Redfield ("Law of Wills," part ii, p. 363), is preferable to the broader construction favored by the Rhode Island court. To hold the term "issue" synonymous with "children" is to give effect to the probable intention of the testator, without doing violence to the language he has used to express that intention.

WILLS — REVOCATION IMPLIED BY DIVORCE. — A husband executed his will, giving his property to his wife, and gave the will into her possession for safe keeping. Some ten years afterwards she obtained a divorce; pending the suit, the parties by mutual agreement made a division of their property, he deeding her a part, and she quitclaiming all interest in the remainder. About two years after the divorce the husband died. The divorced wife then brought forward the will, which she had kept in her possession, and presented it for probate. *Held*, that the divorce revoked the will by implication of law. *Lansing* v. *Haynes*, 54 N. W. Rep. 699 (Mich.).

The case seems to be an extension of the doctrine of revocation implied from change of circumstances, which heretofore has been largely confined to the marriage of a *feme sole* and the marriage of a man and birth of issue. The court found only one case which had much bearing upon the question, and that, so far as it is in point, is *contra*. *Charlton* v. *Miller*, 27 Ohio St. 298. It cannot be said that this extension is an unreasonable one; but it is submitted that the same result might have been accomplished by allowing the divorced wife to take under the will, but compelling her to hold as a constructive trustee for the heirs-at-law, as it would not have been honest for her to keep the property for herself.